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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

Application Number: 09/932,070
Filing Date: August 17, 2001
Appellant(s): BUIL ET AL.

AUG 0 6 2007

Technology Center 2100

John J. Fry
Michael J. Medley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 23 April 2007 appealing from the Office

action mailed 21 November 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the

brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial

proceedings which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct

statement of the status of the claims is as follows:

This appeal involves claims 1-15 and 17-21.

Claims 1-9, 11-15 and 17-21 stand rejected.

Claim 11 has been amended subsequent to the final rejection.

Claim 10 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 16 has been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-15 and 17-21 appears on pages 19-22 of the Appendix to the appellant's brief. The minor errors are as follows:

In claim 11, line 3, "an attribute value for at least one attribute" should be " an attribute value for at least a first attribute".

(8) Evidence Relied Upon

| 5,616,876 | CLUTS | 4-1997 |
| 20030229537 | DUNNING et al. | 12-2003 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1-5, 9, 11-15 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by **Cluts** (U.S. Patent 5,616,876).

Claims 6-8 and 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over **Cluts** (U.S. Patent 5,616,876) as applied to claims 1-5, 9, 11-15 and 21 above, and further in view of **Dunning et al.** (U.S. Patent Application Publication 2003/0229537).

These rejections are set forth in a previous Office action, mailed 21 November 2007.

For the convenience of the Honorable Board of Appeals, the rejection of

representative independent claim 1 is reproduced herein.

Regarding claim 1, **Cluts** teaches **a system for browsing a collection of**

information units as claimed, comprising presentation means for presenting at least

one of said information units (see discussion of the ability to listen to songs, col. 4,

lines 38-54) **via audio or video playback** (see col. 4, lines 55-58), **and attribute means**

for associating a respective one of said information units with an attribute value (see

discussion of the classification of content, col. 14, lines 28-50) **for a plurality of**

attributes (see disclosure of different style categories, col. 14, lines 46-49; see also

disclosure of attributes in the form of categories '1960's', '1970's', 'British Invasion', etc,

and associated attribute values 1, 1, 7, etc., as well as additional attributes in the form of

subcategories 'New York City Rap', 'Los Angeles Rap', Male Rap', etc., col. 15, lines 26-

55), **wherein the system comprises random selection means for randomly selecting a**

unit for presentation for playback whose attribute value meets a criterion (see col. 18,

lines 51-54; see also col. 20, line 21 through col. 21, line 19 et seq.), **the selection and**

presentation for playback being made without interaction by a user based on the

plurality of attributes (see disclosure that the user selects a seed song or initial

condition from which the system automatically and without user intervention selects a

song that is 'similar', col. 14, lines 12-27; see also drawing Figures 5-11; see also

disclosure of the operation of the style EQ, col. 20, line 21 through col. 21, line 19 et

seq.).

(10) Response to Argument

This Examiner's Answer will address the Appellants' arguments in the order in

which they appear in the appeal brief.

A. Issue 1

<u>Claims 18 and 20 are properly rejected under 35 U.S.C. § 112, first paragraph as</u>

<u>failing to comply with the written description requirement.</u>

Regarding claims 18 and 20, the Appellants argue that **(1)** examples of frequency

of skip means operation and duration of skip means operation are disclosed in the

specification at page 3, lines 21-24, and that **(2)** the differentiation between a mode of

operation and the mechanism for selecting the mode of operation is not germane to the

requirements of 35 U.S.C. § 112 first paragraph.

In response, the examiner presents the following arguments.

Regarding argument **(1)** [that examples of frequency of skip means operation

and duration of skip means operation are disclosed in the specification at page 3, lines

21-24], the examiner respectfully responds that this is irrelevant to the rejections at

issue.

At page 3, lines 10-24, the appellants' specification discloses that

10   An embodiment of the system according to the invention is characterized by said skip means being capable of removing at least one criterion in dependence on a mode of operation of said skip means. This provides an extremely quick and intuitive way of requesting the presentation of another information unit. A 'default' mode of operation of the skip means, e.g. simply pressing a skip button, invokes the normal function of the skip

15 means, as described above. A slightly deviant mode of operation, however, will remove one or more criteria a before invoking the normal skip function and thus widen the search space of the random selection means. Preferably, criteria for dependent attributes are removed before criteria for attributes they depend on. For example, a criterion for the 'style' attribute would be removed before a criterion for the 'genre' attribute, which gradually widens the

20 search space. Examples of such deviant operations are iterated or prolonged operation, e.g. pressing the skip button a second time shortly after the first time to remove a criterion for an 'artist' attribute, pressing three times to remove criteria for both the 'artist' and the 'style' attribute, pressing for one second to remove criteria for the 'artist', the 'style' and 'genre' attributes, etc.

Claims 17 and 19 recite a user-operable skip means for controlling the random

selection means to abort presentation of the currently selected unit and skip to another

randomly selected unit, the attributes of the selected unit depending upon a 'mode of

operation of said skip means'. Thus, <u>the result of the skip operation will be different</u>

<u>depending upon the mode of operation of the skip means</u>.

Claims 18 and 20 recite that the mode of operation of the skip means is selected

from the group of frequency of skip means operation and the duration of skip means

operation.

This claim limitation is not disclosed in the specification.

The specification discloses that for a skip operation, there exists a 'default' mode

of operation (involving merely skipping the currently-playing song and randomly

selecting another song) and a slightly deviant mode of operation (involving first

removing one or more criteria, and then invoking the 'default' mode skip operation).

See lines 13 and 15 above.

The claims state that for a skip operation, these exists a 'frequency of skip means'

mode of operation and a 'duration of skip means' mode of operation. However,

according to the disclosure, the claimed 'frequency of skip means' and 'duration of skip

means' are *the mechanism by which one of the modes are selected*, and do not constitute

modes of operation themselves, as is claimed in claims 18 and 20.

Based upon lines 13-17, the mode of operation embodies how the system reacts

to a request to skip a song. Different modes of operation could result in either simply

skipping the song and randomly selecting a new song [default mode], or removing one

or more criteria before skipping the song and randomly selecting a new song [slightly deviant mode].

However, the *mechanism for selecting* which mode of operation is to be executed is completely independent of the mode itself. For instance, one could use the iterated[as disclosed in the specification]/frequency[as it appears in the claims] mechanism to select either the default mode (by pressing the button only once) or the deviant mode (by pressing the button more than once). Likewise, one could *also* use the prolonged[specification]/duration[claimed] mechanism to select either the default mode (by pressing the button but not holding it down) or the deviant mode (by holding the button down for some specified period of time).

Clearly, the specification fails to disclose a 'frequency of skip means' mode of operation or a 'duration of skip means' mode of operation, as recited in claims 18 and 20. Therefore, the rejection of these claims under 35 U.S.C. § 112 first paragraph is proper.

Regarding argument **(2)** [that the differentiation between a mode of operation and the mechanism for selecting the mode of operation is not germane to the

requirements of 35 U.S.C. § 112 first paragraph], the examiner has addressed this

argument above in response to the appellants' argument **(1)**.

For these reasons, the examiner maintains that the rejections of claims 18 and 20

are proper, and should be sustained.

B. Issue 2

Claims 1-5, 9, 11-15 and 21 are properly rejected under 35 U.S.C. 102(b) as being

anticipated by Cluts (U.S. Patent 5,616,876).

Regarding claims 1, 11 and 21, the Appellants argue that **(1)** the **Cluts** reference is

silent with respect to *random selection means for automatically randomly selecting and*

presenting for playback a unit whose attribute value meets a criterion, the selection and

presentation for playback being made without interaction by a user based on the plurality of

attributes as recited in claim 1, that **(2)** in contrast to the examiner's assertions, adding

songs to a playlist is substantially different than selection and presentation for playback

as claimed, that **(3)** the style EQ function allows a user to adjust a mix of songs that is

played from a playlist by changing the position of faders, which requires user action, in

direct contrast to the required elements of the claims, that **(4)** with respect to the "more

like" function disclosed in **Cluts**, each song is located based on a weight value of a

single category, and not *based on a plurality of attributes* as required by the claim, and that

(5) there is no disclosure in the **Cluts** reference with respect to locating style tables or

presenting songs in a list of songs based upon a *combination* (plurality) of style

categories.

In response, the examiner presents the following arguments.

As an initial matter, the examiner points out that this application was previously

appealed to the Board of Patent Appeals and Interferences. The Board rendered a

decision on 28 February 2006, upholding the rejections of record at that time.

The rejections of record for the independent claims at that time were based upon

the combination of two references. However, on page 5 of their decision, the Board

concluded that regarding at least independent claim 1, there were no limitations that

were not anticipated by the **Cluts** reference itself:

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With this understanding in mind of Cluts, it appears to us

that there is no feature of claim 1 that has not been met by

Cluts itself. Correspondingly, these teachings already

identified in Cluts has a corresponding analogous teaching in

Looney as generally outlined by the examiner in relying upon the

abstract, column 2, lines 5 through 18; column 10, lines 49

through 57 and finally, column 9, lines 34 through 59 in the

answer. Basic relationships are set forth in Figure 4 which

shows different screens presented and, for example, Figure 5 and

the controls in Figure 6. The showing in Figure 5 of element 428

as well as the corresponding showing of the controls in Figure 6

of element 542 clearly provide the ability of the user in

Looney's system to permit playback of music in a random manner.

Additionally, various categories or styles or associations of

given songs with respect to styles are depicted in Figures 11

through 17, and 23 through 25.

Accordingly, when prosecution was continued by the appellants, the examiner

followed the guidance of the Board, and presented rejections of the independent claims

under 35 U.S.C. § 102(b) as being anticipated by the **Cluts** reference.

The examiner further notes that, using claim 1 as exemplary, the claims have

been minimally amended since the Board's previous decision. Claim 1 has been

amended only as follows:

Claim 1. A system for browsing a collection of information units, comprising

presentation means for presenting at least one of said information units via audio or

video playback, and attribute means for associating a respective one of said information

units with an attribute value for a plurality of attributes, wherein the system comprises

random selection means for automatically randomly selecting and presenting for

playback a unit whose attribute value meets a criterion, the selection and presentation

for playback made without user interaction by a user based on the plurality of

attributes.

Thus, the appellants' have added three limitations. Firstly, that the system's

presentation means presents the information units via audio or video playback, a

limitation which is anticipated by *at least* the following disclosure in col. 2 of the **Cluts**

reference:

SUMMARY OF THE INVENTION

30   The present invention satisfies the above described needs
by providing systems and methods for selecting and playing
music based on its subjective content.

Secondly, the appellants have added the limitation that the attribute means

associates an information unit [song] with an attribute value <u>for a plurality of attributes,</u>

attributes which are used for selection of information units [songs]. This limitation is

anticipated by at least the following table, appearing in the disclosure at col. 15, lines 37-

47:

| Artist: The Beatles	
Style Category	Weight
1960s	1
1970s	1
British Invasion	7
Rock	5
Pop	5
Innovators	6

Therein, each 'Style Category' is an attribute, each having an associated attribute

value [Weight].

Further support can be found in col. 14:

> In the present invention, the subjective content associated
> 40 with each song is embodied in style tables, which are tools
> for classifying each song's subjective content. Each song
> can be associated with any number of different styles. The
> editor that creates the style table must determine how
> important each style is to the description of each song. This
> 45 is reflected by weighting each style as it pertains to each
> song. Thus, the process of creating a style table for an artist
> involves two steps: (1) creating the list of possible style
> categories; and (2) assigning weightings to each style cat-
> egory. Both of these steps are performed by the editor that
> 50 creates the style table.

Furthermore, **Cluts** also discloses the Style Equalizer [style EQ] in drawing

Figure 11 and at col. 20, lines 33-65, which illustrates the fact that songs [information

units] are associated with a plurality of attributes:

FIG. 11

35

40

45

50

55

60

65
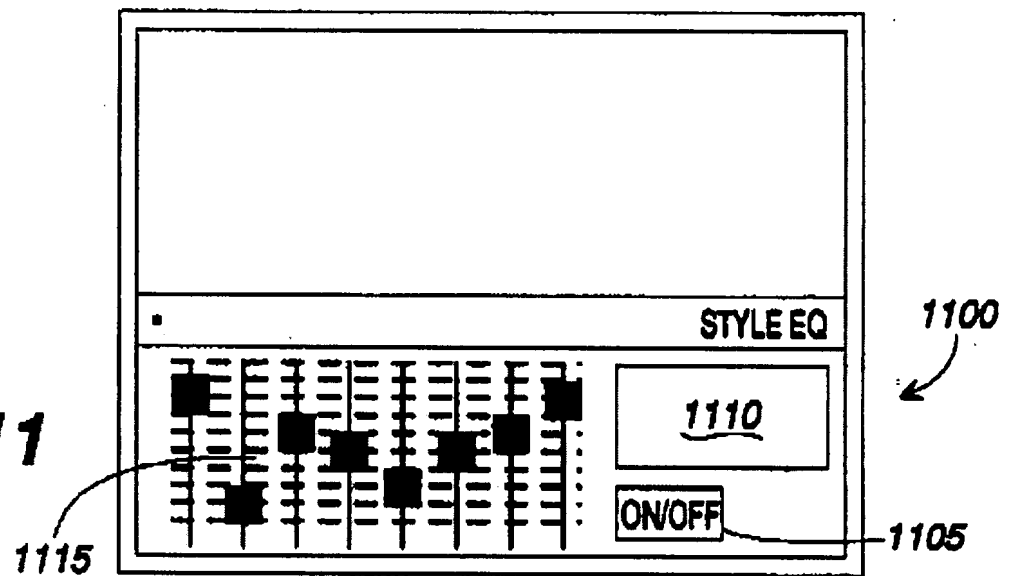
The preferred style EQ includes eight (8) indicators, or faders **1115**. Those skilled in the art will appreciate that the style EQ faders resemble a conventional graphic equalizer. However, instead of each fader being assigned to a frequency band, each fader is assigned to a particular style of music included in the playlist. This allows the faders to be used to give a subscriber a clearer picture of the types of music included in a playlist. For example, a playlist that includes rock music may simply be called "Rock". The style EQ faders may indicate that the playlist includes music that may be more specifically described as 1970s rock, 1980s rock, 1990s rock, soft rock, acid rock, heavy metal, etc.

When a playlist is loaded and the style EQ function is first turned on, the faders **1115** are positioned by the system to indicate the portion of the playlist that fits into the associated style category. The subscriber may get an idea of what is included in the playlist by using the remote control unit's directional control to highlight each of the faders. The display **1110** displays the name of the style associated with the highlighted fader.

The style EQ function also allows the subscriber to adjust the mix of songs that is played from the playlist. For example, if the subscriber dislikes acid rock and heavy metal, the subscriber can "attenuate" those styles by using the remote control unit to move those faders to their lowest position. Likewise, the subscriber can "boost" the amount of soft rock songs that are played by moving the fader upward.

Those skilled in the art will appreciate that the style EQ function does not alter the content of the playlist. Instead, it merely adjusts the mix of songs that are played from the playlist. The details regarding the operation of the style EQ function and the assignment of style names to the faders are discussed below.

Each slider on the style EQ represents a musical style. These musical styles each represent an attribute. Thus, each song [information unit] is associated with a plurality of attributes, as claimed.
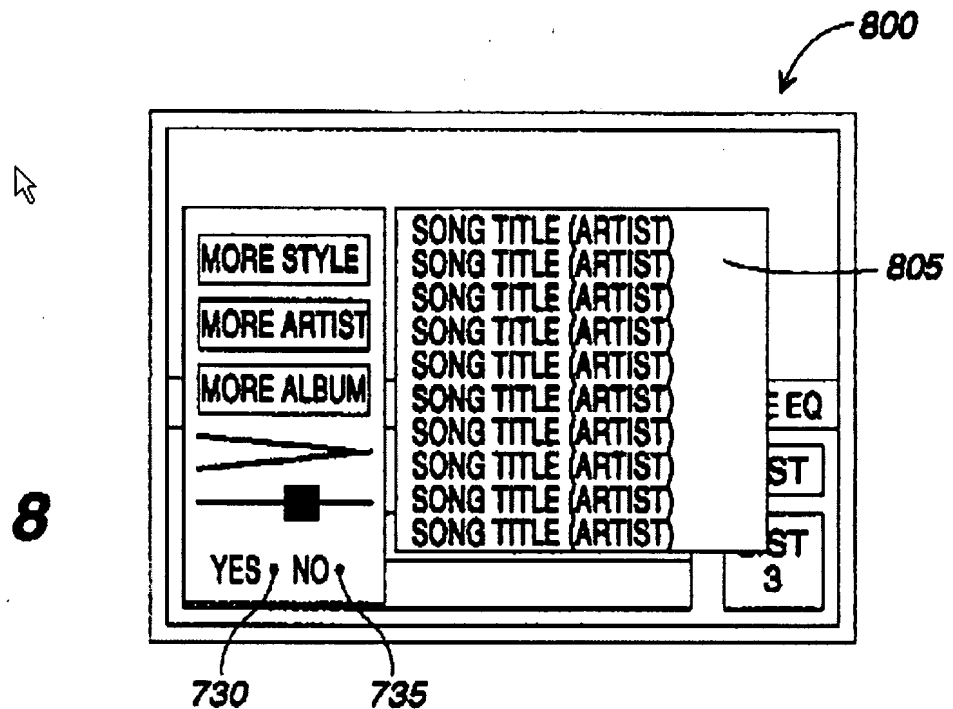
Thirdly, the appellants have added the limitation that the random selection

means automatically randomly selects and presents information units [songs] _for_

playback.

This limitation is anticipated by the disclosure in the **Cluts** reference in cols. 13

and 18 respectively, and drawing Figure 8 of the presentation to the user of the playlist:

> The playlist screen display **500** also provides a list button **535**, which may be used to display a list of the songs that are included in the current playlist and to jump to another song in the playlist. FIG. **6** shows a screen display **600** with a pop-up list **605**, which is displayed when the subscriber activates the list button **535** on the playlist screen display **500**. Each entry in the list includes the title of the song and the artist. In the preferred audio on demand system, the list displays ten (10) of the songs in the current playlist. The subscriber may use the directional control on the remote control unit to scroll through all of the songs in the playlist. The subscriber may also select any of the songs in the playlist by using the directional control to highlight the desired song and pressing the action button (on the remote control unit, FIG. **3**). After the subscriber selects a song from the list **605**, the system returns to the playlist screen display **500**. At that point, the newly selected song begins to play, and the song's title and artist are displayed in the song title box **520** and artist box **525**, respectively.

> At step **1020** the system performs a random sort of the songs that were identified in step **1015**. At step **1025** the system picks the first ten songs from the sorted group of songs and displays a list of those 10 songs to the subscriber.
> 55 This is illustrated in FIG. **8**. In the preferred system, the style categories and weightings that are used in the search are not displayed to the subscriber.

FIG. 8

SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)
SONG TITLE (ARTIST)

MORE STYLE

MORE ARTIST

MORE ALBUM

YES ʔ NO ʔ

730   735

This disclosure teaches that a number of songs have been selected and assembled into a playlist based upon the attributes of the songs. The presentation of the playlist as disclosed anticipates the claimed random selection means automatically randomly selects and presents information units [songs] for playback.

The new limitation 'for playback' merely constitutes an intended use, and is thus afforded little patentable weight. Furthermore, since the system disclosed by **Cluts** is for selecting and playing songs, the claimed feature is anticipated, since the songs presented as members of a playlist are clearly intended to be played back.

Thus, the examiner believes that since the Board has previously ruled that the

Cluts reference discloses all of the limitations of the independent claims presented at

that time, and the **Cluts** reference also clearly discloses all of the newly amended

limitations, the **Cluts** reference therefore anticipates at least the limitations of the

appellants' independent claims.

Regarding argument **(1)** [that the **Cluts** reference is silent with respect to *random*

selection means for automatically randomly selecting and presenting for playback a unit whose

attribute value meets a criterion, the selection and presentation for playback being made without

interaction by a user based on the plurality of attributes as recited in claim 1], the examiner

respectfully disagrees.

The **Cluts** reference discloses an embodiment wherein the user enters a 'seed

song' and a list of songs is generated and presented to the user based upon the

attributes of that seed song. This process is discussed in columns 17 and 18, and
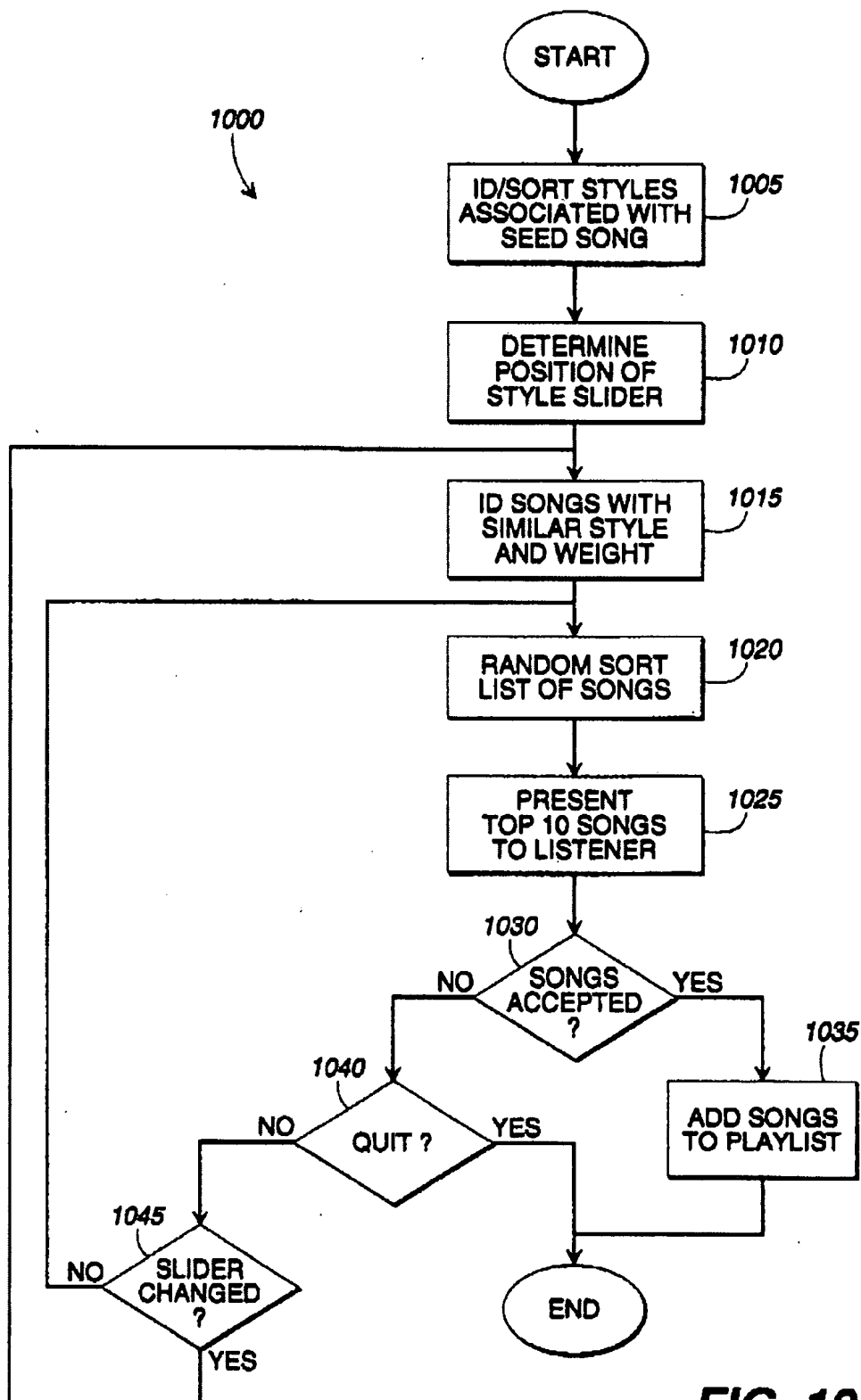
illustrated in drawing Figure 10.

FIG. 10

The system determines the styles [attributes] associated with a user-specified

seed song (step 1005) and the position of the style slider (step 1010) which indicates the

weight to be afforded to the different styles [attributes] associated with the seed song.

The system then identifies all songs with similar styles [attributes] and weights as the

those specified by the seed song and style slider (step 1015). The system then presents

the use user the top 10 songs consistent with the specified styles [attributes] and

weights (step 1025).

This drawing figure alone anticipates the limitations argued by the appellants:

random selection means for automatically randomly selecting and presenting for playback a unit

whose attribute value meets a criterion, the selection and presentation for playback being made

without interaction by a user based on the plurality of attributes.

Regarding the 'without user interaction' limitation, the examiner points out that

the Board addressed this argument on page 4 of their previous decision:

select and present a new song without interaction by a user. It

is emphasized here that the requirement of claim 1 is that this

automatic selection and automatic presentation be done without an

interaction by the user, thus indicating in the claim that the

user may specify a given criterion. Even appellants disclose an

invention and in an example require a user to enter into the

overall system as disclosed a criterion on which the system is to

automatically and randomly select a given new song for

presentation. The ability of the user in Cluts to select a so-

called seed song or initial criterion as well as to set a style

slider mechanism to a given position permits the user in Cluts to

establish a relative association of a given style to individual

songs. The user also has the ability to select the "more style"

button and the "more" and "like" buttons as depicted in Figures 5

through 10. In any event, the flow chart element 1020 in Figure

10 clearly corresponds to the teaching relied upon by the

examiner at column 18, lines 51 through 54 that the system

automatically does a random sort of a list of songs before

presentation to a listener.

Regarding argument **(2)** [that in contrast to the examiner's assertions, adding

songs to a playlist is substantially different than selection and presentation for playback

as claimed], the examiner respectfully points out that the addition of a song to the

playlist is not relied upon by the examiner to anticipate the limitations of claim 1; it is

the initial presentation of the list of songs to the user as illustrated in step 1025 of

drawing Figure 10 that anticipates the appellants' 'presentation for playback' limitation,

as discussed above.

Regarding argument **(3)** [that the style EQ function allows a user to adjust a mix

of songs that is played from a playlist by changing the position of faders, which

requires user action, in direct contrast to the required elements of the claims], the

examiner respectfully disagrees.

As discussed above and decided by the Board in its previous decision, the

limitations of the claims require only that the *selection and presentation for playback* of

information units [songs] be performed without user interaction; this does not preclude

the user's taking action in specifying which attributes are to be used as criterion in
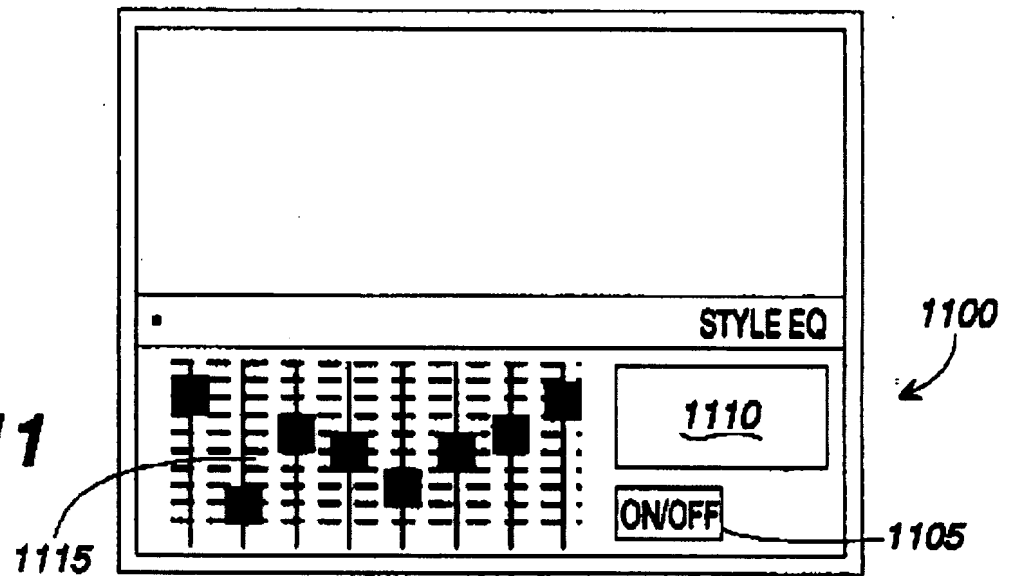
selecting the information units [songs].

Regarding argument **(4)** [that with respect to the "more like" function disclosed in

Cluts, each song is located based on a weight value of a single category, and not *based*

on a plurality of attributes as required by the claim], the examiner respectfully disagrees.

As discussed above, and illustrated by the table at col. 15, lines 37-47, the songs

[information units] disclosed in the **Cluts** reference are associated with a plurality of

attributes:

Artist: The Beatles	
Style Category	Weight
1960s	1
1970s	1
British Invasion	7
Rock	5
Pop	5
Innovators	6

Therein, each 'Style Category' is an attribute, each having an associated attribute

value [Weight]. Furthermore, **Cluts** also discloses the Style Equalizer [style EQ] in

drawing Figure 11 and at col. 20, lines 33-65, which illustrates the fact that songs

[information units] are associated with a plurality of attributes:

FIG. 11

STYLE EQ

1100

1110

ON/OFF

1105

1115

The preferred style EQ includes eight (8) indicators, or
faders 1115. Those skilled in the art will appreciate that the
35 style EQ faders resemble a conventional graphic equalizer.
However, instead of each fader being assigned to a fre-
quency band, each fader is assigned to a particular style of
music included in the playlist. This allows the faders to be
used to give a subscriber a clearer picture of the types of
40 music included in a playlist. For example, a playlist that
includes rock music may simply be called "Rock". The style
EQ faders may indicate that the playlist includes music that
may be more specifically described as 1970s rock, 1980s
rock, 1990s rock, soft rock, acid rock, heavy metal, etc.
45 When a playlist is loaded and the style EQ function is first
turned on, the faders 1115 are positioned by the system to
indicate the portion of the playlist that fits into the associated
style category. The subscriber may get an idea of what is
included in the playlist by using the remote control unit's
50 directional control to highlight each of the faders. The
display 1110 displays the name of the style associated with
the highlighted fader.
The style EQ function also allows the subscriber to adjust
the mix of songs that is played from the playlist. For
55 example, if the subscriber dislikes acid rock and heavy
metal, the subscriber can "attenuate" those styles by using
the remote control unit to move those faders to their lowest
position. Likewise, the subscriber can "boost" the amount of
soft rock songs that are played by moving the fader upward.
60 Those skilled in the art will appreciate that the style EQ
function does not alter the content of the playlist. Instead, it
merely adjusts the mix of songs that are played from the
playlist. The details regarding the operation of the style EQ
function and the assignment of style names to the faders are
65 discussed below.

Each slider on the style EQ represents a musical style. These musical styles each

represent an attribute. Thus, each song [information unit] is associated with a plurality

of attributes, as claimed.

Regarding argument **(5)** [that there is no disclosure in the **Cluts** reference with respect to locating style tables or presenting songs in a list of songs based upon a *combination* (plurality) of style categories], the examiner respectfully disagrees.

The examiner initially points out that the appellants' claims fail to include the 'combination' language at issue. In fact, while claims 1 and 21 include a 'plurality' of attributes, claim 11 explicitly cites 'at least a first attribute', which clearly leaves open the possibility of the use of a single attribute as a criterion for matching information units [songs].

The examiner further points out that claims 1 and 21 include limitations that the selection of information units are made *based on plurality of attributes*. **Cluts** certainly discloses a system wherein each of the attributes [styles] of the seed song are used as criterion in selecting songs for presentation to the user. Each style [attribute] and its associated weight is used as criterion in searching for songs which match the seed song to the degree specified by the user.

Regarding claim 14 (and also dependent claims 2 and 12), the Appellants argue

that **(1)** the **Cluts** reference is deficient of any suggestion of randomly selecting a song

and sending the song for playing, that **(2)** the **Cluts** reference fails to disclose the user

operable hold means as claimed, and that **(3)** the attributes of artist and album are

interdependent and not mutually independent as required by the claim.

In response, the examiner presents the following arguments.

Regarding argument **(1)** [that the **Cluts** reference is deficient of any suggestion of

randomly selecting a song and sending the song for playing], these arguments have

been addressed above.

Regarding argument **(2)** [that the **Cluts** reference fails to disclose the user

operable hold means as claimed], the examiner respectfully disagrees.

The cited claim limitation merely specifies that an attribute value is held as a

criterion for subsequent selections. The **Cluts** reference discloses that the attributes of

the current [seed] song are used in selecting subsequent songs through the use of a

'more like' function at col. 14, lines 12-27. This passage clearly discloses that attribute

values [styles] of the current song are used as criterion for subsequent selections. Other

attributes, such as title, artist, album, etc. would not be affected by the selection of the

seed song.

Regarding argument **(3)** [that the attributes of artist and album are

interdependent and not mutually independent as required by the claim], the examiner

respectfully responds that this fact is irrelevant to the rejection at issue.

The claim requires that information units [songs] are associated with a plurality

of attributes and at least one mutually independent attribute value, and that an attribute

value can be held as criterion for subsequent selections wherein holding the mutually

independent attribute value will not affect a state of another attribute value.

All that is required by this limitation is that any one attribute is independent of

one other attribute. Clearly, while the values of an artist and album are not mutually

independent, said values *are* independent of other attributes such as any individual

style, and furthermore any one style attribute is independent of any other attribute,

since any music can incorporate different styles to varying extents [weights].

Regarding claim 3, the Appellants argue that **(1)** the **Cluts** reference allows a user

to subjectively classify a style and title a playlist, but this has no bearing on the

subcategories or weights thereof, and that **(2)** the **Cluts** reference disclosure of different

fader labels are not attributes of information units.

In response, the examiner presents the following arguments.

Regarding arguments **(1)** [that the **Cluts** reference allows a user to subjectively

classify a style and title a playlist, but this has no bearing on the subcategories or

weights thereof], and **(2)** [that the **Cluts** reference disclosure of different fader labels are

not attributes of information units], the examiner respectfully disagrees.

The **Cluts** reference discloses a hierarchical arrangement of styles wherein a high

level style might be 'Rock', and lower level styles might be, for instance, '1970's rock', or

'soft rock', at col. 20:

> The preferred style EQ includes eight (8) indicators, or
> faders 1115. Those skilled in the art will appreciate that the
> 35 style EQ faders resemble a conventional graphic equalizer.
> However, instead of each fader being assigned to a fre-
> quency band, each fader is assigned to a particular style of
> music included in the playlist. This allows the faders to be
> used to give a subscriber a clearer picture of the types of
> 40 music included in a playlist. For example, a playlist that
> includes rock music may simply be called "Rock". The style
> EQ faders may indicate that the playlist includes music that
> may be more specifically described as 1970s rock, 1980s
> rock, 1990s rock, soft rock, acid rock, heavy metal, etc.

The hierarchical nature of the style attributes are further disclosed in col. 21:

> Those skilled in the art will appreciate that either method 50
> allows the fader labels to be determined by the music in each
> playlist. This avoids the problems that would arise if the
> system defined only a fixed number of style labels that could
> be assigned regardless of the types of music in a playlist. The
> present invention allows broad labels to be used for playlist 55
> containing a broad mix of styles and specific labels to be
> used for narrower playlists. For example, if a playlist
> included all of the music in the world, the fader labels would
> be broad categories, such as classical, jazz, country, rock,
> etc. Similarly, if a playlist includes only jazz music, the style 60
> EQ function will assign meaningful jazz related subcatego-
> ries to the faders.

This disclosure clearly teaches that not only are songs [information units]

associated with a plurality of styles [attributes], but can also be associated with a

number of sub-styles.

The appellants' argument that the labeling of faders are not attributes of

information units misses the point. The reference discloses that the faders of the style

equalizer can be adjusted such that songs [information units] can be selected based

upon a weight [attribute value] given to each style [attribute] through the adjustment of

the faders.

This could not happen unless each style [attribute] associated with a fader were

also an attribute associated with a given song [information unit]. Were this not the case,

then adjusting the faders would have no effect, since there would be no corresponding

attribute associated with the songs [information units] to which the weights of the

faders could be compared.

This being the case, the disclosure that the faders of the style equalizer can be

labeled with 'sub-styles' means that these 'sub-styles' must also be attributes associated

with the songs [information units], since were that not the case, having the ability to

adjust the 'sub-styles' would be a pointless exercise.

Further evidence that this disclosure in the **Cluts** reference is analogous and

anticipates the limitations of claim 3 can be gleaned from the limitation of claim 4,

which depends upon claim 3:

4.   A system as claimed in claim 3, said first attribute representing a genre of said information units and said further attribute representing a sub-genre of said information units.

Clearly, the styles and sub-styles disclosed by the **Cluts** reference (such as the 'Rock' style, and the 'sub-styles' of '1980's Rock' and 'Heavy Metal') are completely analogous to the claimed 'genre' and 'sub-genre' associated with the information units as claimed in claims 3 and 4.

Regarding claim 15, the Appellants argue that **(1)** the **Cluts** reference discloses that prior to a song being played, the user has reviewed and approved such.

In response, the examiner presents the following arguments.

Regarding arguments **(1)** [that the **Cluts** reference discloses that prior to a song being played, the user has reviewed and approved such], the examiner respectfully disagrees.

The limitation of claim 15 is that the random selection means selects and sends

the information unit for playing without user interaction.

As discussed above, this limitation is anticipated by at least the first 5 steps

illustrated in drawing Figure 10. There is no requirement under claim 15 that the song

be played, but merely that it be selected and sent to the presentation means *for playing*.

This constitutes only an intended use, and is afforded little patentable weight.

Furthermore, since the system disclosed by **Cluts** is for selecting and playing songs, the

claimed feature is anticipated, since the songs presented as members of a playlist are

clearly intended to be played back.

For these reasons, the examiner maintains that the rejections of claims 1-5, 9, 11-

15 and 21 are proper, and should be sustained.

C. Issue 3

Claims 6-8 and 17-20 are properly rejected under 35 U.S.C. § 103(a) as being

unpatentable over Cluts (U.S. Patent 5,616,876) as applied to claims 1-5, 9, 11-15 and

21 above, and further in view of Dunning et al. (U.S. Patent Application Publication 2003/0229537).

Regarding claims 6 and 17 (and dependent claims 7, 8 and 18-20), the Appellants argue that **(1)** there is no suggestion or motivation to combine the references since the **Cluts** reference discloses a list of identified songs, and the **Dunning et al.** reference discloses the ability to skip a selected song during playback.

In response, the examiner presents the following arguments.

Regarding arguments **(1)** [that there is no suggestion or motivation to combine the references since the **Cluts** reference discloses a list of identified songs, and the **Dunning et al.** reference discloses the ability to skip a selected song during playback], the examiner respectfully disagrees.

In interpreting the claims at issue, it is important to recognize the distinction between presentation of songs [meaning display of a list of songs] and playback of songs.

In claim 1, there is a presentation means for presenting information units via audio or video playback. This clearly represents the *rendering* of the information unit [the playing of the song via, for example, the audio card of a computer].

Also included in claim 1 is the random selection means for randomly selecting and presenting *for playback* information units which meet a criterion. In this case, the 'presentation' cannot also be the rendering recited above. Rendering is performed by the presentation means, so the presentation that takes place as part of the random selection means clearly constitutes something else (and is interpreted by the examiner as the display of a list of information units [songs] matching the specified criterion).

Regarding claim 14, this claim also recites a random selection means and a presentation means. In this claim, however, the random selection means randomly selects at least one information unit based on a plurality of attributes and sends the at least one information unit to the presentation unit *for playing*. Once again, the limitation 'for playing' merely constitutes an intended use, and is thus afforded minimal patentable weight.

Since there is no recitation in independent claim 14 of actual presentation of the information unit(s), the 'presentation' recited in dependent claim 17 is subject to

interpretation as to whether it refers to the 'presentation' performed by the presentation

means, or the presentation performed by the random selection means. Taking the

teaching in the appellants' specification into account with regard to the operation of the

user-operable skip means, the examiner interprets the 'presentation' recited in claim 17

as meaning the rendering performed by the presentation means.

Similarly, based upon the appellants' specification, the examiner interprets the

'presentation' recited in dependent claim 6 as referring to the rendering performed by

the presentation means of claim 1, and not the presentation performed by the random

selection means.

Given this interpretation, there is sufficient motivation to incorporate the user-

operable skip function disclosed by the **Dunning et al.** reference into the system

disclosed in the **Cluts** reference. Both systems are for selecting and rendering songs to a

user. The **Dunning et al.** reference provides the motivation to incorporate a user-

operable skip function at paragraph [0256]:

> [0256] Finally, play logs may include information as to
> which tracks were repeated, which were aborted or skipped,

and at what volume level the tracks were played. Weights
can be assigned to tracks in the log, based on such obser-
vations. For example, the system may assign a higher weight
to a track that was repeated on the assumption that the user
probably enjoyed that track, while a lower weight may be
assigned to a track that was skipped halfway through, on the
assumption that the user probably did not enjoy the track.

For these reasons, the examiner maintains that the rejections of claims 6-8 and 17-

20 are proper, and should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

Conclusion

Claims 18 and 20 are properly rejected under 35 U.S.C. § 112, first paragraph as

failing to comply with the written description requirement.

Claims 1-5, 9, 11-15 and 21 are properly rejected under 35 U.S.C. 102(b) as being

anticipated by Cluts (U.S. Patent 5,616,876).

Claims 6-8 and 17-20 are properly rejected under 35 U.S.C. § 103(a) as being

unpatentable over Cluts (U.S. Patent 5,616,876) as applied to claims 1-5, 9, 11-15 and

21 above, and further in view of Dunning et al. (U.S. Patent Application Publication

2003/0229537).

In light of the foregoing arguments, the Examiner respectfully requests the

Honorable Board of Appeals to sustain the rejections.

For the above reasons, it is believed that the rejections should be sustained.

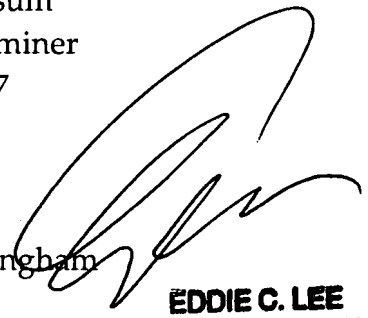
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